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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,268	09/25/2001	Dhaval N. Shah	CISCP064C1	9948

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EXAMINER

LEROUX, ETIENNE PIERRE

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/964,268	Applicant(s) SHAH ET AL.	
	Examiner Etienne P LeRoux	Art Unit 2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 38, 44 and 50-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 38, 44 and 50-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Status:

Claims 38, 44 and 50-80 are pending; claims 1-37, 39-43 and 45-49 having been cancelled. Claims 38, 44 and 50-80 are rejected as detailed below.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 77 has been renumbered claim 75.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38, 44 and 50-80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "if metric information is required" in claims 38, 44 and 50 is a relative term which renders the claim indefinite. The term "if metric information is required" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and

Art Unit: 2161

one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

For purposes of this Office Action, above limitation will be ignored.

The term "if no metric information is required" in claim 1 is a relative term which renders the claim indefinite. The term "if no metric information is required" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For purposes of this Office Action, above limitation will be ignored.

Claims 51-80 are rejected for being dependent from a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 38, 44, 50, 54-59, 64-69 and 74-79 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat No 6,115,752 issued to Chauhan (hereafter Chauhan), as best examiner is able to ascertain.

Claims 38, 44 and 50:

Chauhan discloses:

Art Unit: 2161

determining if metric information is required for use by a configurable [computer software, col 6, line 19] predetermined selection criteria to select a mirrored service [predetermined time has not expired, col 3, lines 30-35]

selecting a service based on the predetermined selection criteria if no metric information is required [round robin scheme, col 3, lines 30-35]

requesting metric information if metric information is required and selecting a mirrored service based on a predetermined criteria using the metric information [best route, Fig 3, step 506, col 7, lines 5-25]

Claims 54, 64 and 74:

Chauhan discloses a round trip scheme [col 3, line 48]

Claims 55, 65 and 75:

Chauhan discloses external metrics [col 7, line 40]

Claims 56, 66 and 76:

Chauhan discloses an internal metrics scheme [address, col 2, lines 1-5]

Claims 57, 67 and 77:

Chauhan discloses a server metrics scheme [Fig 4]

Claims 58, 68 and 78:

Chauhan discloses a local preferences scheme [col 3, line 48]

Claims 59, 69 and 79:

Chauhan discloses a community attributes scheme [Fig 4]

Art Unit: 2161

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51, 61 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chauhan in view of US Pat No 5,918,017 issued to Attanasio et al (hereafter Attanasio), as best examiner is able to ascertain.

Claims 51, 61 and 71:

Chauhan discloses the elements of claim 38/44/50 as noted above but does not disclose a portion scheme. Attanasio discloses a portion scheme [Fig 6, 610, col 8, line 23]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chauhan to include a portion scheme as taught by Attanasio for the purpose of load balancing [col 8, line 28].

Claims 52, 62 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chauhan in view of US Pat No 5,872,930 issued to Masters et al (hereafter Masters).

Claims 52, 62 and 72:

Chauhan discloses the elements of claim 38/44/50 as noted above but does not disclose an administrative costs scheme. Masters discloses an administrative costs scheme [col 3, line 7]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chauhan to include an administrative costs scheme as taught by Masters for the purpose of load balancing [col 3, line 3].

Claims 53, 63 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chauhan in view of US Pat No 6,049,872 issued to Reiter et al (hereafter Reiter).

Claims 53, 63 and 73:

Chauhan discloses the elements of claim 38/44/50 as noted above but does not disclose a random scheme. Reiter discloses a random scheme [col 3, line 25]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chauhan to include a random scheme as taught by Reiter for the purpose of randomly selecting a path [col 3, line 23].

Claims 60, 70 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chauhan in view of US Pat No 6,055,561 issued to Feldman et al (hereafter Feldman).

Claims 60, 70 and 80:

Chauhan discloses the elements of claim 38/44 as noted above but does not disclose a BGP scheme. Feldman discloses a BGP scheme [col 1, lines 30-45]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chauhan to include a BGP scheme as taught by Feldman for the purpose of determining how packets ought to be routed by employing standards that have been extensively deployed [col 1, lines 40-45].

Response to Arguments

Applicant's arguments filed 10/19/2005 have been fully considered but they are not persuasive.

Applicant Argues:

Applicant states in the sixth paragraph of page 7 “Applicants have amended Claim 38 to now read ‘determining if metric information is required for use by a configurable predetermined selection criteria to select a mirrored service.’ Independent clam 44 and 50 have been similarly amended. This limitation is found on lines 20-22 of page 21 of the specification. As a result of the amendment, applicants respectfully submit that the claim is not indefinite for the following reason.

The specification clearly states that whether metric information is required to be requested from agents, in some embodiments, depends on the configurable predetermined selection criteria chosen by, in some embodiments, a user such as a network administrator. A user, such as a network administrator, configures the distributed director (step 600). The user configuration may include types of metrics used for service selection, priorities and weights for these configured metrics, service availability, and default service determinations.” Page 19, lines 19-22. This user configuration determines, in some embodiments, ‘whether DRP agents need to be contacted for metric information.’ Page 21, lines 17-18. ‘Examples of configured selection criteria that do not need to contact DRP agents are portion, random, or administrative costs, since the distributed director may itself follow these criteria.” Page 21, lines 20-22. ‘The DRP agents are preferably contacted for any type of additional informational information that the distributed director needs to facilitate a selection of the ‘best’ service based on the configuration.”

Examiner Responds:

Art Unit: 2161

Examiner is not persuaded. Above response by applicant raises the question why does the network administrator specify metric information in some instances and non-metric information in other instances? Furthermore, it is unclear why the claimed “configurable predetermined selection criteria” sometimes chooses metric information and other times chooses non-metric information. Examiner maintains above rejection of claims 38, 44 and 50-80 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant Argues:

Applicant states in the second paragraph of page 8 “The Office Action indicates that the limitation ‘if metric information is required’ was not applied to Applicants’ claims. Applicants respectfully submit that in light of the amendments to claims 38, 44 and 50, and the remarks above, this limitation should be included in Applicants’ claims and the claims should be allowed for the following reasons. The limitation ‘determining if metric information is required for use by a configurable predetermined selection criteria to select a mirrored service’ is not found in Chauhan in view of Tanigawa. Chauhan teaches a mirrored server selection scheme that requires requesting from mirrored servers a round trip time. ‘In a preferred embodiment, the best route determination begins with requesting all mirrored servers for a round trip time.’ Col 3, lines 39-40. Chauhan makes no determination whether metric information is required to be requested because such information is always requested in order to use the round trip time selection scheme.”

Examiner Responds:

Examiner is not persuaded. Chauhan discloses the following in column 3, lines 26-38:

Art Unit: 2161

The present invention is a system and method for providing server selection for mirrored sites. In a preferred embodiment, a user requests an address via a local name service, and the local name service requests the address from a server, examples of which include an authoritative name server, and an Optimizer Name Server (ONS). If the ONS has already calculated a best route which applies to this user, and a predetermined time applying to the best route has not yet expired, then the ONS replies to the user with the best route server. If, however, the best route has not been determined or the predetermined time for the best route has expired, then the ONS replies to the user via a selection scheme, such as a round robin scheme, and also initiates a best route determination to determine which is the best route for this user.

Chauhan per the above clearly discloses “a configurable predetermined selection criteria” because if no metric information is available, a round-robin scheme is used. However, if metric information is available, then the best route is provided to the user based on the shortest time.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P. LeRoux whose telephone number is (571) 272-4022. The examiner can normally be reached Monday – Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 571 273-8300.

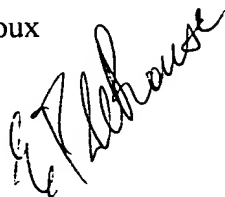
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Application/Control Number: 09/964,268
Art Unit: 2161

Page 10

Etienne LeRoux

1/24/2006

A handwritten signature in black ink, appearing to read "Etienne LeRoux", written diagonally across the page.